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THE CITY OF NEW YORK
LAW DEPARTMENT
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July 5, 2007

VIA HAND DELIVERY

The Honorable Paul A. Crotty
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Application **GRANTED**
SO Ordered JUL 09 2007

Paul A. Crotty
U.S.D.J.

Re: Martinez v. The City of New York et al.
07 Civ. 5811 (PAC)

Dear Judge Crotty:

I am the Senior Counsel with the Office of the Corporation Counsel assigned to the defense in the above-referenced matter in which plaintiff alleges that he was falsely arrested and maliciously prosecuted. Defendant City of New York respectfully requests that its time to respond to the complaint be extended for sixty days from the current due date of July 11, 2007 until September 10, 2007. I have spoken with plaintiff's counsel and plaintiff does not consent to this request.

There are several reasons for seeking an enlargement of time. In accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, defendant City needs this additional time to investigate the allegations of the complaint. It is our understanding that the records of the underlying criminal action, including police records, may have been sealed pursuant to New York Criminal Procedure Law § 160.50. Therefore, this office has already forwarded to plaintiff for execution a consent and authorization for the release of sealed records so that the defendant can access the information, properly assess the case, and respond to the complaint. No previous request for an extension has been made by defendant.

Additionally, upon information and belief, the individually named defendant has only been provided with a Waiver of Service of the Summons and Complaint which, if properly sent to the defendant and executed by him, entitles the defendant to respond to the complaint within 60 days from executing and returning the Waiver of Service. Fed. R. Civ. P. 4(d). This extension should provide time for the defendant to receive, review, and execute the waiver of

MEMO ENDORSED

service and, if executed, should provide time for this office to make a representational decision with respect to him. *See Mercurio v. The City of New York et al.*, 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting *Williams v. City of New York et al.*, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

Accordingly, we respectfully request that defendant City's time to answer or otherwise respond to the complaint be extended to September 10, 2007.

Thank you for your consideration in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Hillary A. Frommer", with a long horizontal flourish extending to the right.

Hillary A. Frommer (HF 9286)
Senior Counsel

cc: David Zelman (via facsimile)



"David Zelman ESQ"
<dzelman@civrtslaw.com>

07/06/2007 12:21 PM

Please respond to
dzelman@civrtslaw.com

To Marlon_Ovalles@nysd.uscourts.gov

cc

bcc

Subject Re: Martinez v. The City of New York et al 07 Civ 5811 (PAC)

I have no opposition to that extension. Thank you for notifying me. David zelman, esq.
Sent from my BlackBerry® wireless handheld

-----Original Message-----

From: Marlon_Ovalles@nysd.uscourts.gov

Date: Fri, 6 Jul 2007 12:19:18

To: dzelman@civrtslaw.com

Cc: hfrommer@law.nyc.gov

Subject: Martinez v. The City of New York et al 07 Civ 5811 (PAC)

Mr. Zelman,

Judge Crotty has received your adversaries request dated July 5, 2007. If possible, please submit the reasons you oppose via fax. Judge Crotty will be in the district on Monday, July 9, 2007, but will not be in the district from Tuesday, July 10, 2007 through Friday, July 13, 2007. If Judge Crotty does not receive your objections by Monday, July 9, 2007, your adversaries time to answer will be extended until Monday, July 16 2007. Thank you.

Marlon Ovalles

Courtroom Deputy to the Hon. Paul A. Crotty, U.S.D.J

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Southern District of New York

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